

Bureau of Waste Management
Kansas Department of Health & Environment
Phone: (785) 296-1616
Fax: (785) 296-1592

"Burke, Annie" <BURKEA@KOCHIND.COM>



"Burke, Annie"
<BURKEA@KOCHIND.COM
>

01/19/2005 01:37 PM

To ESpellma@kdhe.state.ks.us

cc

Subject Proposed Modifications - Part 1 Permit, SAP and Application

Hello, Everett,

Thank you for your input in our recent telephone call on the interpretation of permit conditions. The draft markup and clean copies of the permit application, the permit and the SAP are attached.

We understand that this electronic submittal is the initial step to assist in developing a formal submittal of requested modifications. To assist in this process, there are a few issues that we want to note as you begin your review.

- While we did not request any revision on the GWPS for nitrate/nitrite, we have discussed previously the potential confusion on the issue of speciation. The standard for nitrate is 10 mg/l, and that for nitrite is 1 mg/l. However, the permit, in Attachment C, shows the GWPS as 10 mg/l for "Nitrate + Nitrite as N". It is our understanding that the GWPS is interpreted as 10 ml/l nitrate plus 1 mg/l nitrite. It would be helpful if KDHE would confirm that its understanding of this GWPS is the same as ours.
- During the meeting of September 16, 2004, we discussed the need for clarifications and changes to the frequency of sampling, maintenance, and the function of certain wells, based on changes in groundwater depth and other factors. For example, we noted that TW-79 is a monitoring well, and has never been used as a recovery well. However, it is so listed in the current permit documents. Our proposed changes to address these issues are contained in Sections E and G of the revised Part B application, in Table 2, Section IV.D.3, and Attachment D of the Part 1 permit, and in the Sampling and Analysis Plan. We understand that these changes might require Class 2 modifications as defined in 40 CFR 270.42.
- Section H presents the cost estimate for closure and post-closure activities, as updated in May 2004. The Part 1 permit provides in Section II.J.1 that KNC will annually revise the cost estimate 60 days prior to the

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establishment of the financial instrument. Because of the discussions between KDHE and KNC on financial assurance issues after the change of ownership, it is not clear when the establishment of the financial instrument actually occurred. KNC requests clarification on the date so that the annual update of the estimate can be appropriately scheduled.

- Section I, Personnel Training, has been revised to more clearly illustrate how the training provided addresses the operational and emergency response requirements of 40 CFR 264.16 and Part I Permit provision II.E. These revisions do not represent any reduction in the extent of training as described in the original application, but do change the type of training initially described in the application. It is possible that this modification might require a Class 2 modification
- As we discussed, the permit does not currently address the potential impact of circumstances beyond the control of KNC, other than weather delays to well repair activities. To ensure that such situations are addressed, we are proposing to add a "force majeure" clause to permit condition I.E.14. It is possible that this change would require a Class 2 modification
- As we also discussed, to expedite the submittal of informal requests for information, we understand that KDHE interprets the signatory and certification requirements of permit condition I.F to apply to reports and information required by the permit or SAP, such as semiannual and annual reports, notification of situations that could potentially affect health and the environment, and similar submittals, as intended in the parent Federal requirement, 40 CFR 270.11 (b). We understand that KDHE's view is that these requirements would not apply to informational, informal, or "FYI", submittals (such as the recent letter updating KDHE about weather-related delays to sampling of certain wells) Based on our understanding of KDHE's interpretation, we are not proposing any change to the current wording of condition I.F. If we misunderstand KDHE's position on this clause, please let us know as we would then likely propose a slight modification to the permit language to allow for a more streamlined ability to conduct discussions between KNC staff and KDHE staff.

If you have any questions or need additional information on these issues or on any other requested modifications, please feel free to contact me. Once we have your comments on these changes proposed in these documents we will produce a final version for formal submittal.

AnnieLaurie Burke, PE
Environmental Compliance Leader
KOCH Nitrogen Company
11559 US Highway 50

P.O. Box 1337
Dodge City, KS 67801
(620)227-8631 x350 (voice)
(620)227-6016 (fax)
(620)339-9024 (mobile)

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